

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Iowa Telecom Petition for Interim Waiver of	)	WC Docket No. 05-337
the Commission's Universal Service High-	)	
Cost Loop Support Mechanism	)	

**ORDER**

**Adopted: May 19, 2010****Released: May 19, 2010**

By the Chief, Wireline Competition Bureau:

**I. INTRODUCTION**

1. In this order, we deny a petition filed by Iowa Telecommunications Services, Inc. (Iowa Telecom) requesting that the Commission waive certain sections of the Commission's rules to permit Iowa Telecom to receive universal service high-cost support under the non-rural mechanism, rather than under the high-cost loop support mechanism for rural carriers.<sup>1</sup> Specifically, Iowa Telecom requests that the Commission waive temporarily sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for universal service high-cost support based on its network's forward-looking economic costs.<sup>2</sup> When it filed for waiver, Iowa Telecom also requested that the Commission forbear from enforcing these sections of the Commission's rules to achieve the same result. The Commission denied that forbearance request on August 6, 2007, concluding among other things that forbearance was not in the public interest.<sup>3</sup> As explained below, for the same reasons the Commission found that forbearance would not be consistent with the public interest, we find that the requested waiver would not serve the public interest. We therefore deny Iowa Telecom's Waiver Petition.

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<sup>1</sup> Iowa Telecom Petition for Interim Waiver of the Commission's Universal Service High-Cost Loop Support Mechanisms, WC Docket No. 05-337 (filed May 8, 2006) (Waiver Petition).

<sup>2</sup> See Waiver Petition at 1; 47 C.F.R. §§ 36.601-36.631, 54.305, 54.309, 54.313, 54.314. Iowa Telecom also filed a petition requesting, in the alternative, forbearance from these rules. Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanisms, WC Docket No. 05-337, (filed May 8, 2006) (Forbearance Petition). On June 2, 2006, the Wireline Competition Bureau released a public notice establishing a pleading cycle for comments on Iowa Telecom's Forbearance Petition and Waiver Petition. *Iowa Telecom Services, Inc., Seeks Forbearance from or Waiver of the Commission's Universal Service Rules to Permit it To Be Eligible for Universal Service Support under the High-Cost Mechanism for Non-Rural Carriers*, WC Docket No. 05-337, Public Notice, 21 FCC Rcd 6272 (Wireline Comp. Bur. 2006). A list of parties filing comments in these proceedings is appended to the order denying the forbearance petition. See *Iowa Telecom Petition for Forbearance Under 47 U.S.C. § 160(c) from the Universal Service High-Cost Loop Support Mechanism*, WC Docket No. 05-337, Order, 22 FCC Rcd 15801, 15816 (2007) (*Iowa Telecom Forbearance Order*).

<sup>3</sup> *Iowa Telecom Forbearance Order*, 22 FCC Rcd 15801.

## II. BACKGROUND

2. In section 254 of the Communications Act of 1934, as amended (the Act), Congress instructed the Commission, after consultation with the Federal-State Joint Board on Universal Service (Joint Board), to establish specific, predictable, and sufficient support mechanisms to preserve and advance universal service.<sup>4</sup>

3. *High-Cost Support for Rural Carriers.* When the Commission determined, in the 1997 *Universal Service First Report and Order*, that universal service high-cost support should be based on the forward-looking economic cost of constructing and operating the network facilities and functions used to provide the supported services, it also determined that rural carriers' support would not begin to be based on forward-looking economic cost until further review.<sup>5</sup> The Commission determined that rural carriers would begin receiving support based on forward-looking economic costs "only when [the Commission has] sufficient validation that forward-looking support mechanisms for rural carriers produce results that are sufficient and predictable."<sup>6</sup>

4. In the 1999 *Ninth Report and Order*, the Commission adopted a universal service support mechanism based on forward-looking economic costs for non-rural carriers.<sup>7</sup> Rather

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<sup>4</sup> 47 U.S.C. § 254.

<sup>5</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8888-89, paras. 199, 203 (1997) (*Universal Service First Report and Order*) (subsequent history omitted). Based on a Joint Board recommendation, in 1997 the Commission adopted, for universal service purposes, a definition of rural carrier that mirrored the definition of "rural telephone company" found in section 153 of the Act. *Id.* at 8943-44, para. 310. Pursuant to this definition, a rural telephone company is a local exchange carrier operating entity to the extent that the entity:

- (A) provides common carrier service to any local exchange carrier study area that does not include either:
  - (i) any incorporated place of 10,000 inhabitants or more, or any part thereof, based on the most recently available population statistics of the Bureau of the Census; or
  - (ii) any territory, incorporated or unincorporated, included in an urbanized area, as defined by the Bureau of the Census as of August 10, 1993;
- (B) provides telephone exchange service, including exchange access, to fewer than 50,000 access lines;
- (C) provides telephone exchange service to any local exchange carrier study area with fewer than 100,000 access lines; or
- (D) has less than 15 percent of its access lines in communities of more than 50,000 on the date of enactment of the Telecommunications Act of 1996.

47 U.S.C. § 153(37). There is no statutory requirement, however, that the Commission use this definition for universal service purposes

<sup>6</sup> *Universal Service First Report and Order*, 12 FCC Rcd at 8917, para. 252.

<sup>7</sup> See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Ninth Report and Order and Eighteenth Order on Reconsideration, 14 FCC Rcd 20432 (1999) (*Ninth Report and Order*), remanded, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2003) (*Qwest I*); *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order on Remand, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, 18 FCC Rcd 22559 (2003), remanded, *Qwest Communications Int'l, Inc. v. FCC*, 398 F.3d 1222 (10<sup>th</sup> Cir. 2005) (*Qwest II*); *High-Cost Universal Service Support*; *Federal-State Joint Board on Universal Service*, WC Docket No. 05-337, CC Docket No. 96-45, Order and Memorandum Opinion and Order, , FCC 10-56, Order on Remand and Memorandum Opinion and Order (rel. Apr. 16, 2010) (*Qwest II Remand Order*); see also *Federal-State Joint Board on Universal* (continued....)

than attempting to modify the forward-looking economic cost mechanism, in 2000 the Rural Task Force, which was appointed to consider the appropriate mechanism for rural carriers, recommended the continued use of embedded costs for a five-year period.<sup>8</sup> Based on these recommendations, and those of the Joint Board,<sup>9</sup> the Commission adopted a modified embedded cost mechanism for a five-year period in the 2001 *Rural Task Force Order*.<sup>10</sup> In the 2004 *Rural Referral Order*, the Commission asked the Joint Board to review the Commission's rules relating to the universal service high-cost support mechanisms for rural carriers and to determine the appropriate rural mechanism to succeed the plan adopted in the *Rural Task Force Order*.<sup>11</sup> In May 2006, the Commission extended the universal service high-cost support rules adopted in the *Rural Task Force Order* on an interim basis until the Commission concluded its rural review proceeding and adopted changes, if any, to those rules.<sup>12</sup>

5. *Iowa Telecom Waiver Petition.* Iowa Telecom is a rural, price-cap local exchange carrier (LEC) serving approximately 230,000 lines in three study areas in Iowa.<sup>13</sup> On May 8, 2006, Iowa Telecom filed a petition asking the Commission to waive sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for universal service high-cost support based on its network's forward-looking economic costs under the non-rural mechanism.<sup>14</sup> Iowa Telecom requests that the waiver be effective "until such time as the FCC adopts a final successor regime to the *Rural Task Force Order* that allows rural price cap carriers such as Iowa Telecom to receive loop support based on its network's forward-looking economic costs."<sup>15</sup> As noted above, Iowa Telecom also filed a petition asking the Commission to forbear from enforcing sections 36.601-

(...continued from previous page)

*Service; Forward-Looking Mechanism for High Cost Support for Non-Rural LECs*, CC Docket Nos. 96-45, 97-160, Tenth Report and Order, 14 FCC Rcd 20156 (1999), *affirmed*, *Qwest I*, 258 F.3d 1191.

<sup>8</sup> Letter from William R. Gillis, Chair, Rural Task Force, to Magalie Roman Salas, Secretary, FCC, CC Docket No. 96-45 (dated Sept. 29, 2000) (Rural Task Force Recommendation).

<sup>9</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Recommended Decision, 16 FCC Rcd 6153 (Fed.-State Jt. Bd. 2001); *see also Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, 16 FCC Rcd 6141 (2001).

<sup>10</sup> *Federal-State Joint Board on Universal Service, Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Fourteenth Report and Order and Twenty-Second Order on Reconsideration, and Further Notice of Proposed Rulemaking in CC Docket No. 96-45, and Report and Order in CC Docket No. 00-256, 16 FCC Rcd 11244, 11244 (2001) (*Rural Task Force Order*).

<sup>11</sup> *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 19 FCC Rcd 11538 (2004) (*Rural Referral Order*).

<sup>12</sup> *Federal-State Joint Board on Universal Service; High-Cost Universal Service Support*, CC Docket No. 96-45, WC Docket No. 05-337, Order, 21 FCC Rcd 5514 (2006).

<sup>13</sup> Iowa Telecom acquired its exchanges from GTE in 2000. When Iowa Telecom filed its petitions, it stated that it had over 240,500 total lines. *See* Waiver Petition, Appendix at 2. Based on the most recent data filed by the Universal Service Administrative Company (USAC), Iowa Telecom's three study areas have approximately 209,000 working loops. *See* Universal Service Administrative Company (USAC), Quarterly Administrative Filings for 2010, First Quarter (1Q) Appendices, at HC05 (filed November 2, 2009) (USAC 1Q 2010 filing), <http://www.universalservice.org/about/governance/fcc-filings/2010/>.

<sup>14</sup> *See* Waiver Petition at 1; 47 C.F.R. §§ 36.601-36.631, 54.305, 54.309, 54.313, 54.314.

<sup>15</sup> *See* Waiver Petition at 1; *see also Rural Task Force Order*, 16 FCC Rcd 11244.

36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to achieve the same result.<sup>16</sup>

6. Iowa Telecom claims that it "is unique in its operations as both a pure rural carrier and price cap carrier subject to an incompatible patchwork of regulations under the Commission's access charge, high-cost loop support, and other universal service support programs."<sup>17</sup> Iowa Telecom argues that providing high-cost support to Iowa Telecom based upon embedded cost-based methodologies undermines section 254's universal service goals, because the low embedded cost of the network Iowa Telecom acquired from GTE in 2000 results in zero high-cost loop support for Iowa Telecom.<sup>18</sup> Iowa Telecom asserts that it invested nearly \$32 million in 2001, another \$34 million in 2002, and additional amounts in subsequent years, but nevertheless receives no universal service support under the safety valve mechanism, because its historical costs remain too low to qualify for support.<sup>19</sup> Iowa Telecom argues that, without additional funding for infrastructure development, it "will be unable for quite some time to permit access to high-quality and advanced telecommunications services to all its customers."<sup>20</sup>

7. *Iowa Telecom's High-Cost Support.* Although, as noted above, Iowa Telecom does not currently receive any high-cost loop support, Iowa Telecom received approximately \$4.6 million in interstate access support in 2009.<sup>21</sup> In addition, Iowa Telecom separately operates Montezuma Mutual Telephone Company (Montezuma) in Iowa, Lakedale Telephone Inc. (Lakedale) in Minnesota, and Sherburne County Rural Telephone Corp. (SCRTC) in Minnesota, which are rural, rate-of-return carriers receiving high-cost support based on embedded costs.<sup>22</sup> In 2009, Montezuma received approximately \$362,500 in high-cost support; Lakedale received approximately \$780,000; and SCRTC received more than \$3 million.<sup>23</sup>

8. *Iowa Telecom Forbearance Order.* On August 6, 2007, the Commission denied Iowa Telecom's request that the Commission forbear from sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for universal service high-cost support under the non-rural mechanism.<sup>24</sup>

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<sup>16</sup> See Forbearance Petition at 1.

<sup>17</sup> Waiver Petition at 4.

<sup>18</sup> See *id.* at 4-5.

<sup>19</sup> See *id.*, Appendix at 13-16 & n.52.

<sup>20</sup> *Id.*, Appendix at 14-15.

<sup>21</sup> Support estimates in this paragraph are based on 2009 USAC disbursement data. See <http://www.universalservice.org/hc/tools/disbursements/default.aspx>.

<sup>22</sup> See *Iowa Telecommunications Services, Inc., Petition for Waiver of Section 61.41 of the Commission's Rules*, WC Docket No. 09-25, Order, 24 FCC Rcd 8963, para. 1 & n.2 (Wireline Comp. Bur. 2009) (granting waiver of the "all or nothing rule" to allow Iowa Telecom to operate Lakedale and SCRTC as rate-of-return companies and noting that Iowa telecom also owns Montezuma, an average schedule company). When Iowa Telecom filed its Waiver Petition, it had not completed its purchase of Montezuma, and stated that the requested relief does not apply to Montezuma. See Waiver Petition at 2 n.3.

<sup>23</sup> See *supra* note 21. Support estimates for 2010 are available from USAC. See USAC 1Q 2010 filing, at HC01.

<sup>24</sup> *Iowa Telecom Forbearance Order*, 22 FCC Rcd 15801.

The Commission concluded that forbearance from these rules would not give Iowa Telecom the relief it sought.<sup>25</sup> The Commission further concluded that, even if forbearance would have provided the relief sought, Iowa Telecom failed to demonstrate that its forbearance request met the requirements of section 10 of the Act.<sup>26</sup> In particular, Iowa Telecom failed to demonstrate that the universal service high-cost support rules are not necessary for the protection of consumers or that forbearance is in the public interest.<sup>27</sup>

### III. DISCUSSION

9. For the reasons set forth below, we find that Iowa Telecom has not demonstrated good cause to justify a waiver of the Commission's rules to permit Iowa Telecom to be eligible for universal service high-cost support under the non-rural mechanism, rather than under the high-cost loop support mechanism for rural carriers.<sup>28</sup> As the Commission found in the *Iowa Telecom Forbearance Order*, i.e., that forbearing from these rules would not be in the public interest, we find here that waiving the same rules would not serve the public interest.<sup>29</sup>

10. Iowa Telecom claims that adherence to the Commission's universal service high-cost rules is inconsistent with the public interest and the Commission's "long-standing policy . . . that all carriers should receive support based upon the forward-looking economic cost of their networks absent compelling reasons in particular circumstances."<sup>30</sup> The Commission rejected these arguments in denying Iowa Telecom's forbearance petition.<sup>31</sup>

11. Iowa Telecom argues that its unique operating conditions warrant waiver of the rural high-cost support rules, and that grant of its waiver request would serve the public interest by allowing the carrier to make additional network investments and upgrades.<sup>32</sup> In denying Iowa Telecom's forbearance request, the Commission found that providing Iowa Telecom with support under the non-rural mechanism would not serve the public interest because the potential harm to consumers in ten other states that would lose support outweighed the potential benefits

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<sup>25</sup> *Id.* at 15805-07, paras. 7-12.

<sup>26</sup> *Id.* at 15808-15, paras. 13-28; 47 U.S.C. § 160.

<sup>27</sup> *Iowa Telecom Forbearance Order*, 22 FCC Rcd at 15808-14, paras. 13-27.

<sup>28</sup> Generally, the Commission's rules may be waived for good cause shown. 47 C.F.R. § 1.3. The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest. *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*). In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular*, 897 F.2d at 1166. Waiver of the Commission's rules is appropriate only if both (i) special circumstances warrant a deviation from the general rule, and (ii) such deviation will serve the public interest. *NetworkIP, LLC v. FCC*, 548 F.3d 116, 125-128 (D.C. Cir. 2008), *Northeast Cellular*, 897 F.2d at 1166.

<sup>29</sup> See *Iowa Telecom Forbearance Order*, 22 FCC Rcd at 15808, 15810-14, paras. 14, 19-27.

<sup>30</sup> Waiver Petition at 2-3 (quoting *Universal Service First Report and Order*, 12 FCC Rcd at 8888, para. 199) ("establish[ing] that the level of support for service to a particular customer will ultimately be determined based upon the forward-looking economic cost of constructing and operating the network facilities and functions used to provide that service").

<sup>31</sup> *Iowa Telecom Forbearance Order*, 22 FCC Rcd at 15806-07, paras. 9-11.

<sup>32</sup> Waiver Petition at 4-5.

to consumers in Iowa.<sup>33</sup> Indeed, based on the record, the Commission found that it was not clear to what extent Iowa consumers or the public interest would benefit if Iowa Telecom were to receive support based on its forward-looking economic costs. The Commission found that data problems associated with applying the non-rural mechanism to Iowa Telecom, including problems with updating line counts in the Commission's cost model, constituted an additional reason why it would not be in the public interest to provide Iowa Telecom with support under the non-rural mechanism.<sup>34</sup> Similarly, we find that waiver of the rules requested by Iowa Telecom to provide additional funding for voice services under the legacy high-cost program is not in the public interest. Moreover, Iowa Telecom has not provided any evidence demonstrating special circumstances that justify providing it additional universal service support under the existing rules. It has not made any showing that the amount of support it currently receives is insufficient to meet the statutory standards in section 254.

#### IV. CONCLUSION

12. For the reasons discussed above, we deny Iowa Telecom's request for waiver of sections 36.601-36.631, 54.305, 54.309, 54.313, and 54.314 of the Commission's rules to the extent necessary to permit Iowa Telecom to be eligible for high-cost universal service support under the non-rural mechanism.

#### V. ORDERING CLAUSES

13. Accordingly, IT IS ORDERED THAT, pursuant to sections 1, 4(i) and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i) and 254, and sections 0.91, 0.291 and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291 and 1.3, the petition for waiver filed by Iowa Telecommunication Services, Inc. on May 8, 2006, IS DENIED.

14. IT IS FURTHER ORDERED, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. § 1.102(b)(1), that this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Sharon E. Gillett  
Chief  
Wireline Competition Bureau

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<sup>33</sup> See *Iowa Telecom Forbearance Order*, 22 FCC Rcd at 15808, 15810-13, paras. 14, 19-23. The Commission also found that forbearance from the rules identified by Iowa Telecom would simply create a vacuum and would not result in Iowa Telecom receiving support under the non-rural mechanism. See *id.* at 15805-07, paras. 7-12. Similarly, we do not believe that waiver of these rules, without further Commission action, would result in the relief sought.

<sup>34</sup> See *Iowa Telecom Forbearance Order*, 22 FCC Rcd at 15813-14, paras. 24-27.

